REMARKS

Upon careful and complete consideration of the Office Action dated October 15, 2002, applicants have amended the claims which, when considered in conjunction with the comments herein below, are deemed to place the present application into condition for allowance. Favorable reconsideration of this application, as amended, is respectfully solicited.

The Office Action rejected claims 2, 4, 10 and 12 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, claims 2 and 10 were rejected for the use of the phrase "and the like", while claims 4 and 12 were rejected for the use of the phrase "and other water activity controlling solutes". Both phrases were alleged to be indefinite, resulting in the scope of the claim being unascertainable. The identified claims have been amended to delete the phrases identified by the Examiner. Consequently, based on the removal of these phrases, it is respectfully requested that the rejection of these claims be withdrawn.

The Office Action then went on to reject claims 1-5, 7, and 9-12 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,723,167 to Lewis et al. (hereinafter referred to as "Lewis et al."), in view of U.S. Patent No. 3,950,560 (hereinafter referred to as "Rahman et al. I") and U.S. Patent No. 4,109,026 to Rahman et al. (hereinafter referred to as "Rahman et al. II").

This rejection of the claims is predominantly based on the teachings of Lewis et al. The Office Action alleged that Lewis et al. disclose a process of making a

dehydrated vegetable by dehydrating a vegetable piece to between 15 and 60%, and compressing the vegetables. Water activity solutes can be added to the vegetables before pressing. The Office Action noted that the present invention differed from Lewis et al. in regard to its "optional" further dehydration of the product and in its rehydration step.

It is respectfully submitted that the Examiner is confusing the meaning of the use of the term "optional" in the claim language of the claims. That is, the further dehydration of the product of the present invention is not really "optional" as understood by the Examiner. As identified in the preamble of the claim 1, the present invention is directed to a dehydrated shelf stable vegetable product which comprises a vegetable piece **"having a moisture content of about 12% or less**..." Said product is prepared by initially partially dehydrating said vegetable pieces to a moisture content from about 8% to about 30%. If this initial partial dehydration step results in vegetable pieces having a moisture content of more than 12%, than further dehydration is carried out. The use of the term "optionally" in the claims was used because in the case where the initial dehydration of the vegetable pieces resulted in a moisture content of about 12% or less, the further dehydration step would not be necessary. However, it must be recognized, that the final product in accordance with the present invention has a moisture content of about 12% or less, regardless of whether or not the further dehydration step is required.

Lewis et al. clearly teach a product having a moisture content between 15 and 60%. This moisture content is essential to Lewis et al. for the reasons set out in the paragraph bridging columns 3 and 4 thereof:

> The dehydration step removes sufficient amount of water to form a vegetable product that will not crystallize or freeze at freezer temperature and produces a product which is flexible and non-fragile and essentially dry to the touch. If the moisture content is too low, the vegetable product will become hard, fragile and brittle at freezing temperatures. If the moisture content is too high, the vegetable pieces will freeze hard due to the formulation of ice crystals; the cell structure of the vegetable will be damaged and the vegetable will become fragile. It is preferred that the moisture content will typically be in the range of about 15% to about 60% (w/w) and more prefereably between about 20% to about 40% w/w.

The "Summary of the Invention" section of Lewis et al. found in the paragraph bridging columns 1 and 2 of said patent further reinforces the essential nature of the 15-60% (w/w) moisture content achieved by dehydration. It is stressed that Lewis et al. specifically teach away from a moisture content of a vegetable product being less than 15% (w/w) on the basis that a vegetable product having a lower moisture content will become hard, fragile and brittle at freezing temperatures. That is, the skilled artisan relying on the Lewis et al. patent would not even attempt to have a product having a moisture content of less than 15%.

In contrast to the teaching of Lewis et al., the dehydrated vegetable product in accordance with the present invention has a moisture content of about 12% or less. This is **NOT** an optional amount. The use of the word "optionally" in independent claims 1 and 9 have evidently confused the Examiner. In order to clarify the present invention, these claims have been amended to reflect the fact that when the moisture content of the partially dehydrated vegetable pieces is not 12% or less after the initial dehydrating step, then a further dehydrating step is required to bring the moisture content to 12% or less.

In order to make obvious the lower moisture content of the present invention, the Office Action has relied on Rahman et al. I and II. Although Rahman et al. I and II teach drying of a compressed vegetable to less than 5%, such a combination of these references would not be made with Lewis et al. such that the skilled artisan would consider reducing the moisture content of 15-60% taught by Lewis et al. as being critical to their invention.

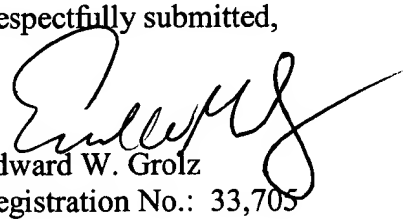
Based on the amendments to the claims and the arguments set forth above, it is respectfully submitted that the claims of the present invention, as amended contain patentable subject matter over the cited references. It is therefore respectfully requested that the rejection of the claims be withdrawn.

The Office Action next rejected claims 6, 8, 13 and 14 under 35 U.S.C. §103(a) as allegedly being unpatentable over Lewis et al., and further in view of Rahman et al. I and II. The arguments submitted above equally apply to this rejection regarding the claimed moisture content of the dehydrated vegetable pieces. The facts remain the same. Lewis et al. specifically teach a moisture content of 15-60%. Still further, Lewis et al. teaches away from a moisture content of less than 15%. The present invention teaches a moisture content of its partially dehydrated vegetable pieces of about 12% or less. Consequently, the present invention is clearly not taught or suggested by the teaching of Lewis et al. It is further noted that the Office action cannot combine the Lewis et al. reference with any other reference which would suggest a lower moisture content range, i.e. one within the claimed invention, as Lewis et al. clearly teaches that a moisture content of less than 15%

would not be acceptable. Thus, any rejection of the claimed invention based on the Lewis et al. disclosure, must fail.

It is respectfully requested that the rejection of claims 6, 8, 13 and 14 be withdrawn as well for the same reasons the withdrawal of the initially rejected claims must be withdrawn. It is respectfully submitted that all the claims of the present application contain patentable subject matter and a Notice of Allowance is earnestly solicited.

Respectfully submitted,



Edward W. Grolz
Registration No.: 33,705

SCULLY, SCOTT, MURPHY & PRESSER
400 Garden City Plaza
Garden City, New York 11530
(516) 742-4343

EWG/nd